



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 3832-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1610.7B (PESMAN)
(c) MCO P1400.32D (ENLPROMMAN)
(d) Manual for Courts-Martial (2019 Ed.), Part V
(e) MCO 1900.16 (MARCORSEPMAN)
(f) MCO P1070.12K (IRAM)
(g) MARADMIN 311/23, 16 Jun 23
(h) MARADMIN 131/24, 14 Mar 24

Encl: (1) DD Form 149 w/enclosures
(2) Petitioner's NAVMC 10132 UPB entry of 24 Oct 22
(3) Administrative Remarks (Page 11) 6105 counseling entry of 24 Oct 22
(4) DC Fitness Report for the reporting period, 15 Jun 22 to 24 Oct 22
(5) CO, █, Set Aside, ltr 1070 CO of 28 Mar 24

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her naval record be corrected by removing all documentation pertaining to Non-judicial Punishment (NJP) that was imposed on 24 October 2022 and restoration of all rights and associated privileges. Petitioner also requested that her fitness report for the reporting period ending on 24 October 2022 be corrected and that she be granted remedial promotion consideration to the rank of gunnery sergeant (GySgt).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 30 April 2024, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of the naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy, with the exception of her fitness report for the reporting period 15 June 2022 to 24 October 2022, pursuant with reference (b), and her request for remedial promotion consideration for the rank of GySgt, pursuant with

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reference (c). Therefore, the Board only considered Petitioner's request to remove the Unit Punishment Book and the associated counseling entry dated 24 October 2022.

b. On 24 October 2022, pursuant with reference (d), the Commanding Officer (CO) imposed NJP for violation of Article 92, Uniform Code of Military Justice (UCMJ). Specifically, for recruit abuse by hitting multiple recruits in the hands with a clipboard during close order drill, and unauthorized practices (elevated planks, skull drag, wagon wheel). Petitioner received forfeiture of \$856 pay per month for two months (\$1712), suspended for a period of 6 months, at which time, unless sooner vacated. Petitioner acknowledged her Article 31, UCMJ Rights, accepted NJP, certified that she was given the opportunity to consult with a military lawyer, acknowledged her right to appeal, and elected not to appeal the CO's finding of guilt at NJP. Enclosure (2).

c. On 24 October 2022, the CO subsequently issued Petitioner a counseling entry concerning for her violation of Article 92, Failed to Obey a Lawful Order, which resulted in Battalion Level NJP for violation of the [REDACTED] for recruit abuse, substantiated by a Command Investigation on 24 June 2022 in accordance with references (e) and (f). Petitioner signed the counseling entry and, although she elected to submit a written rebuttal, none could be located in her official record. As a result, Petitioner also received a Commandant of the Marine Corps (DC) directed fitness report, marked adverse, regarding her NJP. She acknowledged the fitness report and, in her statement, she apologized for her actions and adds that her conduct was out of character and [she] had no intent to harm [REDACTED]. See Enclosures (3) and (4).

d. Pursuant to references (g) and (h), Petitioner was considered by the Fiscal Year (FY) 2023 and 2024 GySgt Promotion Selection Boards and was not selected.

e. On 28 March 2024, the CO who imposed NJP, set aside Petitioner's NJP proceedings and restored all rights, privileges, and property affected by virtue of the punishment. As rational, the CO determined the imposed punishment to be a clear injustice. Specifically, based upon the dismissal at court martial for the senior member of the [REDACTED] Team. In this regard, the CO determined that given the senior Marine was not held accountable for the acts which resulted in Petitioner's NJP, her punishment should be voided [set aside] and removed from her official record. Further, he adds that since the date of her NJP, Petitioner has performed her duties as a [REDACTED] above reproach, serving as [REDACTED] and successfully completing the demanding Special Duty Assignment. See Enclosure (5).

f. Petitioner contends that based upon the imposing officer's decision to set aside the NJP and restore all rights, privileges, and property affected by the execution of this punishment, that all documentation pertaining to the NJP should be removed from her official record. She further contends that as a result of the NJP, she was twice passed for promotion to GySgt.

CONCLUSION

Upon review and consideration of all the evidence of record the Board determined that Petitioner's request warrants partial relief.

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In this regard, the Board noted pursuant to reference (d), Petitioner's NJP was properly set aside. The Board also noted the CO made the appropriate findings to support his decision. Thus, the Board relied upon the CO's set aside letter and determined Petitioner's NJP and the associated counseling entry should be removed from Petitioner's official record as a matter of injustice.

However, concerning Petitioner's request for remedial promotion to the rank of GySgt, the Board determined she must first exhaust her administrative remedies by requesting a remedial promotion selection board from Headquarters, Marine Corps (MMPB-11) pursuant to reference (c). The board reached the same conclusion regarding her request for removal of the adverse fitness report, ending on 24 October 2022, in accordance with reference (b). Thus, the Board concluded, with the exception of the fitness report and Petitioner's request for remedial promotion consideration, that the UPB and associated counseling entry shall be removed from her official record.

RECOMMENDATION

In view of the above, the Board directs the following corrective action:

Petitioner's naval record be corrected by removing enclosures (2) and (3).

That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

That no further relief be granted.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

5/21/2024

[REDACTED]